

REFERENCE TITLE: industrial development authorities; student loans

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2659

Introduced by
Representative Yarbrough

AN ACT

AMENDING SECTION 35-706, ARIZONA REVISED STATUTES; RELATING TO INDUSTRIAL
DEVELOPMENT AUTHORITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-706, Arizona Revised Statutes, is amended to
3 read:

4 35-706. Corporate powers

5 A. In addition to the powers granted to an industrial development
6 authority by law, the authority ~~shall have~~ HAS the following powers, together
7 with all powers incidental or necessary for the performance of ~~the following~~
8 THOSE POWERS:

9 1. To acquire, whether by purchase, exchange, gift, lease or otherwise
10 establish, construct, improve, maintain, equip and furnish one or more
11 projects.

12 2. To lease to others any or all of its projects, to charge and
13 collect rent and to terminate any lease upon the failure of the lessee to
14 comply with any of the obligations of the lease.

15 3. To sell, exchange, donate and convey to others any or all of its
16 projects or properties upon terms and conditions as its board of directors
17 may deem advisable, including the power to receive for any sale the note or
18 notes of the purchaser of the project or property, whenever its board of
19 directors finds the action to further advance the interest of the
20 corporation.

21 4. To issue its bonds for the purpose of carrying out any of its
22 powers.

23 5. To mortgage and pledge any or all of its projects and properties,
24 whether owned or acquired, and to pledge the revenues, proceeds and receipts
25 or any portion of the revenues, proceeds and receipts from a project as
26 security for the payment of the principal of and interest on any bonds so
27 issued and any agreements made in connection therewith.

28 6. To contract with and employ others to provide and to pay
29 compensation for professional services and other services as the board of
30 directors deems necessary for the financing of projects and for the business
31 of the corporation.

32 7. To refund outstanding obligations incurred by an enterprise to
33 finance the cost of a project when the board of directors finds that the
34 refinancing is in the public interest.

35 8. To invest and reinvest funds under the control of the corporation
36 and bond proceeds pending application thereof to the purposes for which the
37 bonds were issued, subject only to the provisions of any bond resolution,
38 lease or other agreement entered into by the board of directors.

39 9. To make secured or unsecured loans for the purpose of financing or
40 refinancing the acquisition, construction, improvement, equipping or
41 operating of a project and to charge and collect interest on the loans and
42 pledge the proceeds of loan agreements as security for the payment of the
43 principal and interest of any bonds, or designated issues of bonds, issued by
44 the corporation, and any agreements made in connection with the loan,

1 whenever the board of directors finds the loans to further advance the
2 interest of the corporation or the public.

3 10. To acquire and hold obligations of any kind to carry out any of its
4 purposes.

5 11. Subject to this section, to make loans to any bank, savings and
6 loan institution, credit union or other mortgage lender, whether organized or
7 existing under the laws of this state, another state or the United States,
8 which is qualified to do business in this state, for the purpose of enabling
9 the institutions to make loans to finance the acquisition, construction,
10 improvement or equipping of projects which are owner-occupied single family
11 dwelling units to be occupied by persons of low and moderate income, as
12 determined by the corporation. The loans shall be fully secured in the same
13 manner as deposits of public funds or by loans secured by mortgages, deeds of
14 trust or other security instruments guaranteed or insured by the United
15 States, or any instrumentality thereof, or by any private mortgage insurance
16 or surety company which is approved by the federal home loan mortgage
17 corporation or the federal national mortgage association and which is
18 licensed to do business in this state, if the private mortgage insurance
19 shall be in a dollar amount sufficient to satisfy the mortgage insurance
20 requirements for loans eligible to be purchased by the federal home loan
21 mortgage corporation or the federal national mortgage association or any
22 other agency or department of the United States. The security shall not be
23 necessary if the bonds issued to make the loans are guaranteed or insured by
24 an agency, department or instrumentality of the United States. Any bonds
25 issued to make loans shall be ratable as "A" or better by a nationally
26 recognized bond rating agency.

27 12. Subject to this section, to purchase or enter into advance
28 commitments to purchase loans or any loan interests secured by mortgages,
29 deeds of trust or other security instruments relating to projects which are
30 owner-occupied single family dwelling units from or with any bank, savings
31 and loan institution, credit union or other mortgage lender, whether
32 organized or existing under the laws of this state, another state or the
33 United States, which is qualified to do business in this state, on terms and
34 conditions as may be determined by the corporation. The purpose of the
35 purchases shall be to finance directly or indirectly the acquisition,
36 construction, improvement or equipping of projects which are owner-occupied
37 single family dwelling units to be occupied by persons of low and moderate
38 income. If the bonds issued to make purchases are not guaranteed or insured
39 by an agency, department or instrumentality of the United States or secured
40 by a letter of credit, insurance policy, surety bond or other credit facility
41 from a financial institution or a combination of such instruments, the
42 purchased loans shall be guaranteed or insured by the United States or any
43 agency, department, or instrumentality thereof, or by any private mortgage
44 insurance or surety company which is approved by the federal home loan
45 mortgage corporation or the federal national mortgage association or secured

1 by a letter of credit, insurance policy, surety bond or other credit facility
2 from a financial institution or a combination of such instruments. In the
3 case of private mortgage insurance, the insurance shall be in a dollar amount
4 sufficient to satisfy the mortgage insurance requirements for loans eligible
5 to be purchased by the federal home loan mortgage corporation or the federal
6 national mortgage association or any other agency or department of the United
7 States. Any bonds issued to purchase loans shall be ratable as "A" or better
8 by a nationally recognized bond rating agency. If the purchased loans have
9 not been originated on behalf of the corporation to directly finance
10 projects, the corporation shall require that the institution receiving
11 proceeds from the sale of the loans use the proceeds to make loans to finance
12 or refinance the acquisition, construction, improvement or equipping of
13 projects which are owner-occupied single family dwelling units to be occupied
14 by persons of low and moderate income, as determined by the corporation.

15 13. To elect not to issue an amount of qualified mortgage revenue bonds
16 which it may otherwise issue during any calendar year and to issue instead
17 mortgage credit certificates pursuant to a qualified mortgage credit
18 certificate program as defined in section 35-901.

19 14. To make loans to any person or entity owning residential property
20 or to make loans to any bank, savings and loan association, credit union or
21 other mortgage lender, or to purchase or enter into advance commitments to
22 purchase funding for the repair or improvement of property related to
23 residential or neighborhood improvement projects. An authority may issue its
24 bonds or incur other obligations to fund loans or purchases. An authority
25 shall establish the provisions relating to bonds or other obligations,
26 including the security for the loans, and shall establish the guidelines for
27 the approval, funding, purchasing and security of the loans.

28 15. To enter into contracts and execute any agreements or instrument
29 and do any other act necessary or appropriate to carry out its purposes.

30 16. To exercise the powers granted by this chapter, including through
31 the issuance of bonds, to provide financing or refinancing for projects other
32 than a project as defined in section 35-701, paragraph 8, subdivision (a),
33 item (v), located in whole or in part outside this state, provided that the
34 board of directors of the corporation has determined that the exercise of
35 such powers will provide a benefit within this state.

36 17. TO EXERCISE THE POWERS GRANTED BY THIS CHAPTER, INCLUDING THROUGH
37 THE ISSUANCE OF BONDS, TO FINANCE STUDENT LOANS.

38 B. The corporation shall not have the power to operate any project as
39 a business other than as lessor or seller nor shall any corporation make any
40 loans pursuant to subsection A, paragraph 9 of this section for projects
41 which are owner-occupied single family dwelling units except by utilizing as
42 its contract agent a mortgage lender, whether organized or existing under the
43 laws of this state, another state or the United States, which is qualified to
44 do business in this state. Any project established pursuant to subsection A,
45 paragraph 14 of this section is not required to use a mortgage lender as its

1 contract agent. The corporation shall not permit any funds derived from the
2 sale of its bonds to be used, loaned or provided for the acquisition of any
3 facilities of a public utility or public service corporation, except as
4 provided in section 35-701. The corporation shall comply with title 38,
5 chapter 3, article 3.1.

6 C. A person's or family's eligibility for an owner-occupied single
7 family dwelling unit financed pursuant to subsection A, paragraph 11, 12 or
8 13 of this section shall be determined by considering the person's or
9 family's income. Owner-occupied single family dwelling units shall only be
10 financed as provided in subsection A, paragraphs 11, 12 and 13 of this
11 section unless the owner-occupied single family dwelling units are located in
12 an area designated pursuant to section 36-1479 as a slum or blighted area as
13 defined in section 36-1471 by a municipality having a population of more than
14 two hundred fifty thousand persons according to the most recent United States
15 decennial census or a special census conducted in accordance with section
16 42-5033.

17 D. In the exercise of its powers authorized in this section with
18 respect to projects which are owner-occupied single family dwelling units to
19 be occupied by persons of low and moderate income and financed pursuant to
20 subsection A, paragraphs 11 and 12 of this section, the corporation shall
21 establish, subject to approval by the governing body of the authorizing
22 county or municipality, standards and requirements applicable to the purchase
23 of loans or the making of loans to mortgage lenders, including:

24 1. The eligibility of mortgage lenders, including the requirement that
25 all mortgage lenders be approved as mortgagees by the federal housing
26 administration and the veterans administration and be approved as sellers and
27 servicers of mortgage loans by the federal national mortgage association or
28 federal home loan mortgage corporation.

29 2. The time within which mortgage lenders must make commitments and
30 disbursements for mortgage loans.

31 3. The character of residences to be financed by mortgage loans.

32 4. The eligibility of persons of low and moderate income, including
33 the requirement that no person of low and moderate income may receive, more
34 than once in a three year period, a mortgage loan financed directly or
35 indirectly from the proceeds of bonds issued by the corporation.

36 5. The terms and conditions of mortgage loans to be acquired.

37 6. The amounts and types of insurance coverage required on residences,
38 mortgages and bonds.

39 7. The representations and warranties of mortgage lenders confirming
40 compliance with the standards and requirements.

41 8. Restrictions as to interest rate and other terms of mortgage loans
42 and the return realized on mortgage loans by mortgage lenders.

43 9. The type and amount of collateral security to be provided to assure
44 repayment of any loans from the corporation and to assure repayment of bonds.

1 10. Assignment of the mortgage loans to a trustee acting on behalf of
2 the corporation which shall be either a bank or trust company doing business
3 in this state, having an officially reported combined capital surplus,
4 undivided profits and reserves of not less than fifteen million
5 dollars. Trustees must be approved to sell mortgages to and service
6 mortgages for the federal national mortgage association and the federal home
7 loan mortgage corporation.

8 11. Any other matters related to the purchase of mortgage loans or the
9 making of loans to mortgage lenders deemed relevant by the corporation. In
10 establishing standards and requirements, the corporation shall be guided by
11 the following standards:

12 (a) The amount of mortgage monies proposed to be made available in the
13 area is to be reasonably related to the demand for mortgage monies.

14 (b) For projects of owner-occupied single family dwelling units to be
15 occupied by persons of low and moderate income and financed pursuant to
16 subsection A, paragraphs 11 and 12 of this section, at least ten per cent of
17 all mortgage monies proposed to be made available by the corporations other
18 than mortgage monies reserved for any period to finance mortgage loans on
19 residences located within an area designated as a slum or blighted area as
20 defined in section 36-1471 shall be reserved for at least a three month
21 period for the financing of mortgage loans on manufactured housing unless the
22 department of commerce makes a determination that any bonds issued to make
23 loans will not be ratable as "A" or better by a nationally recognized bond
24 rating agency, in which case no such reservation is required. If all the
25 mortgage monies reserved for manufactured housing are not committed or used
26 to make mortgage loans during this three month period, the mortgage lender
27 may allocate the remaining monies to finance mortgage loans on any single
28 family dwelling unit.

29 (c) Any departure from the level of commitment fees, origination fees
30 or servicing fees normally charged by a mortgage lender is to be justified in
31 the context of the transaction.

32 (d) The costs, fees and expenditures associated with the issuance of
33 bonds are to be reasonably related to the services provided.

34 E. Only corporations, the formations of which have been approved by
35 the governing body of a county having a population of more than nine per cent
36 of the total state population computed according to the most recent United
37 States decennial census or by the governing body of a municipality having a
38 population of more than nine per cent of the total state population computed
39 according to the most recent United States decennial census, shall have the
40 powers granted in subsection A, paragraphs 11, 12 and 13 of this
41 section. Except as provided in section 35-913, subsections E and F, a
42 corporation shall not exercise the powers granted in subsection A, paragraphs
43 11, 12 and 13 of this section outside of its jurisdiction. For the purposes
44 of a refunding of any mortgage revenue bond issued before January 1, 2000,
45 the proceeds from the refunding may be used outside the jurisdiction of the

1 corporation issuing the refunding bonds except the corporation issuing the
2 refunding bonds shall obtain the consent from another corporation with powers
3 granted in subsection A, paragraphs 11, 12 and 13 of this section if the
4 proceeds of the refunding are to be used within the jurisdiction of that
5 corporation. For the purposes of exercising the powers granted in subsection
6 A, paragraphs 11, 12 and 13 of this section, the jurisdiction of a
7 corporation formed on behalf of a county includes all incorporated and
8 unincorporated territory in the county.

9 F. A corporation may not permit proceeds of bonds or a qualified
10 mortgage credit certificate program to be used to finance projects which are
11 owner-occupied single family dwelling units within the corporate limits of an
12 incorporated city or town unless the governing body of the city or town has
13 approved the general location and character of the residences to be
14 financed. The corporation, prior to the issuance of bonds or mortgage credit
15 certificates for that purpose, shall give written notice to the governing
16 body of each city or town in which it intends to permit proceeds of an issue
17 of bonds or mortgage credit certificates to be used to finance projects which
18 are owner-occupied single family dwelling units and of the general location
19 and character of the residences which may be financed. The governing body of
20 the city or town shall be deemed to have given its approval unless it has
21 denied approval by formal action of the governing body within twenty-one days
22 after receiving the written notice from the corporation. Approvals given or
23 deemed to have been given with respect to use of proceeds of an issue of
24 bonds or mortgage credit certificates under this subsection may not be
25 withdrawn. Denials may be withdrawn by the governing body of a city or town
26 and approval may be given thereafter if the corporation issuing the bonds or
27 mortgage credit certificates approves the withdrawal of the denial.

28 G. Two or more corporations with the powers granted by subsection E of
29 this section may provide:

30 1. That a corporation, the formation of which was approved by the
31 governing body of a county or city, may exercise the powers granted in
32 subsection A, paragraphs 11, 12 and 13 of this section, with respect to
33 owner-occupied single family dwelling units located in all counties and
34 cities which are parties to a cooperative agreement.

35 2. For the joint exercise by two or more corporations, each formed
36 with the approval of a governing body executing the cooperative agreement, of
37 the powers granted in subsection A, paragraphs 11, 12 and 13 of this section,
38 with respect to owner-occupied single family dwelling units located in all
39 counties and cities which are parties to the cooperative agreement. The
40 agreement shall specify the calendar year or years for which it is effective,
41 the means by which the agreement may be terminated prior to the expiration of
42 the calendar year or years and the aggregate principal amount of bonds which
43 may be issued by the designated corporation or corporations to exercise the
44 powers pursuant to the agreement. The corporation or corporations designated
45 in the agreement to exercise the powers in the counties and cities which are

1 parties to the agreement are the only corporation or corporations authorized
2 and having jurisdiction to exercise the powers and to issue bonds to carry
3 out the powers in the counties and cities while the agreement is in
4 effect. The combined jurisdictions of all the counties and cities which are
5 parties to the cooperative agreement are the jurisdictions of the corporation
6 or corporations designated to exercise the powers granted in subsection A,
7 paragraphs 11, 12 and 13 of this section within the meaning of the mortgage
8 subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section
9 103A).

10 H. It shall not be a conflict of interest under title 38, chapter 3,
11 article 8, and this chapter, for any trustee or any mortgage lender to enter
12 into loan agreements with, or to sell mortgage loans to, the corporation as
13 contemplated in subsection A, paragraphs 11, 12 and 13 of this section, act
14 for or under contract with the corporation as a mortgage originator,
15 servicer, paying agent or depository, act as holder or dealer of bonds of the
16 corporation or have as a director, officer or employee any member of the
17 board of directors of the corporation or any combination.

18 I. The department of economic security shall once in each calendar
19 year on or before March 1 determine the median family income of this state
20 for the purposes of this chapter.

21 J. All areas in this state which are either designated pursuant to
22 section 36-1479 as slum or blighted areas as defined in section 36-1471 or
23 designated as pockets of poverty by the United States department of housing
24 and urban development are designated as areas of chronic economic distress
25 within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499;
26 26 United States Code section 103A).

27 K. Any corporation that is described in subsection E of this section
28 and that desires to exercise the powers granted in subsection A, paragraphs
29 11, 12 and 13 of this section, with respect to owner-occupied single family
30 dwelling units located in two or more counties, may do so if the corporation,
31 before issuing bonds or mortgage credit certificates for that purpose, gives
32 written notice to the governing bodies of the other counties and their
33 respective corporations, if any, of its intent to permit the proceeds of an
34 issue of bonds or mortgage credit certificates to finance projects within its
35 jurisdiction which are owner-occupied single family dwelling units. The
36 governing body of a county and its respective corporation, if any, which have
37 been given notice are deemed to have approved the use of the proceeds or
38 mortgage credit certificates for owner-occupied single family dwelling units
39 within their jurisdiction and approved the use of any state ceiling, as
40 defined in section 35-901, unless approval is denied by formal action of the
41 governing body or the board of directors of the corporation, if any, within
42 twenty-one days after receiving written notice from the corporation. Absent
43 a denial of approval as stated in this subsection, a cooperative agreement
44 providing for the exercise of the powers granted in subsection A, paragraphs
45 11, 12 and 13 of this section is deemed to exist among the applicable

1 counties or corporations. Approvals given or deemed to have been given with
2 respect to the matters stated in this subsection may not be
3 withdrawn. Denials by the governing body of a county apply only to the
4 unincorporated areas of the county. Denials may be withdrawn by the
5 governing body of a county and approval may be given thereafter if the
6 corporation issuing the bonds or mortgage credit certificates approves the
7 withdrawal of the denial. Mortgage credit certificates and bond proceeds
8 issued pursuant to this subsection shall be available on an equitable basis
9 within each of the participating counties.